

By: Fraser

S.B. No. 1401

A BILL TO BE ENTITLED

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AN ACT

relating to the administration of the telecommunications infrastructure fund, including the abolition of the telecommunications infrastructure fund board and the transfer of the board's duties to the comptroller of public accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 57.042, Utilities Code, is amended to read as follows:

Sec. 57.042. DEFINITIONS. In this subchapter:

(1) "Ambulatory health care center" means a health care clinic or an association of such a clinic that is:

(A) exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, as an organization described by Section 501(c)(3), as amended; and

(B) funded wholly or partly by a grant under 42 U.S.C. Section 254b, 254c, or 256, as amended.

(2) [~~"Board"~~] ~~means the telecommunications infrastructure fund board.~~

[~~(3)~~] "Commercial mobile service provider" means a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66).

(3) [~~(4)~~] "Fund" means the telecommunications

1 infrastructure fund.

2 (4) [~~(5)~~] "Institution of higher education" means:

3 (A) an institution of higher education as defined  
4 by Section 61.003, Education Code; or

5 (B) a private or independent institution of  
6 higher education as defined by Section 61.003, Education Code.

7 (5) [~~(6)~~] "Library" means:

8 (A) a public library or regional library system  
9 as those terms are defined by Section 441.122, Government Code;

10 (B) a library operated by an institution of  
11 higher education or a school district; or

12 (C) a library operated by a nonprofit corporation  
13 as defined by Section 441.221(3), Government Code.

14 (6) [~~(7)~~] "Public not-for-profit health care  
15 facility" means a rural or regional hospital or other entity such as  
16 a rural health clinic that:

17 (A) is supported by local or regional tax  
18 revenue;

19 (B) is a certified not-for-profit health  
20 corporation, under federal law; or

21 (C) is an ambulatory health care center.

22 (7) [~~(8)~~] "School district" includes an independent  
23 school district, a common school district, and a rural high school  
24 district.

25 (8) [~~(9)~~] "Public school" means a public elementary or  
26 secondary school, including an open-enrollment charter school, a  
27 home-rule school district school, and a school with a campus or

1 campus program charter.

2           (9) [~~(10)~~] "Taxable telecommunications receipts"  
3 means taxable telecommunications receipts reported under Chapter  
4 151, Tax Code.

5           (10) [~~(11)~~] "Telehealth service" means a health  
6 service, other than a telemedicine medical service, delivered by a  
7 licensed or certified health professional acting within the scope  
8 of the health professional's license or certification who does not  
9 perform a telemedicine medical service that requires the use of  
10 advanced telecommunications technology, other than by telephone or  
11 facsimile, including:

12                   (A) compressed digital interactive video, audio,  
13 or data transmission;

14                   (B) clinical data transmission using computer  
15 imaging by way of still-image capture and store and forward; and

16                   (C) other technology that facilitates access to  
17 health care services or medical specialty expertise.

18           (11) [~~(12)~~] "Telemedicine medical service" means a  
19 health care service initiated by a physician or provided by a health  
20 professional acting under physician delegation and supervision,  
21 for purposes of patient assessment by a health professional,  
22 diagnosis or consultation by a physician, treatment, or the  
23 transfer of medical data, that requires the use of advanced  
24 telecommunications technology, other than by telephone or  
25 facsimile, including:

26                   (A) compressed digital interactive video, audio,  
27 or data transmission;

1 (B) clinical data transmission using computer  
2 imaging by way of still-image capture and store and forward; and

3 (C) other technology that facilitates access to  
4 health care services or medical specialty expertise.

5 (12) "Telepharmacy system" means a system that  
6 monitors the dispensing of prescription drugs and provides for  
7 related drug use review and patient counseling services by an  
8 electronic method, including the use of the following types of  
9 technology:

10 (A) audio and video;

11 (B) still image capture; and

12 (C) store and forward.

13 SECTION 2. Subsection (a), Section 57.043, Utilities Code,  
14 is amended to read as follows:

15 (a) The telecommunications infrastructure fund is a trust  
16 fund inside the state treasury with the comptroller in trust.  
17 Interest earned on the fund shall be credited to the fund.  
18 Notwithstanding any other law, the assets of the fund, including  
19 interest earned by those assets, are to be held in trust for the  
20 benefit and protection of the fund and may not be diverted,  
21 distributed, or appropriated for any purpose other than as provided  
22 by this subchapter. The comptroller shall only appropriate amounts  
23 earned by the fund and may not divert, distribute, or appropriate  
24 the corpus of the trust fund. In this subsection, "corpus of the  
25 trust fund" means the amount deposited to the credit of the fund  
26 under Section 57.048(c) and does not include earnings or interest  
27 [an account in the general revenue fund]. The [telecommunications

1 ~~infrastructure] fund [account]~~ is composed of the public schools  
2 account and the qualifying entities account. [~~Section 403.095,~~  
3 ~~Government Code, does not apply to the telecommunications~~  
4 ~~infrastructure fund account or to the accounts that compose the~~  
5 ~~fund account.~~]

6 SECTION 3. Section 57.0455, Utilities Code, is amended to  
7 read as follows:

8 Sec. 57.0455. MASTER PLAN FOR INFRASTRUCTURE DEVELOPMENT.

9 (a) The comptroller [~~board~~] shall adopt a master plan for  
10 infrastructure development. The plan must:

- 11 (1) cover a five-year period;
- 12 (2) be updated annually; and
- 13 (3) describe the project, timeline, and resource  
14 allocation targets for each year included in the plan.

15 (b) The comptroller [~~board~~] shall publish each proposed  
16 amendment to the plan and each proposed annual update in the Texas  
17 Register in accordance with Subchapter B, Chapter 2002, Government  
18 Code.

19 SECTION 4. Section 57.046, Utilities Code, is amended to  
20 read as follows:

21 Sec. 57.046. USE OF ACCOUNTS. (a) The comptroller [~~board~~]  
22 shall use money in the public schools account to award grants and  
23 loans in accordance with this subchapter to fund:

- 24 (1) equipment for public schools, including  
25 computers, printers, computer labs, and video equipment; and
- 26 (2) intracampus and intercampus wiring to enable those  
27 public schools to use the equipment.

1 (b) The comptroller [~~board~~] shall use money in the  
2 qualifying entities account for any purpose authorized by this  
3 subchapter, including:

- 4 (1) equipment;
- 5 (2) wiring;
- 6 (3) material;
- 7 (4) program development;
- 8 (5) training;
- 9 (6) installation costs; and
- 10 (7) a statewide telecommunications network.

11 SECTION 5. Section 57.047, Utilities Code, is amended to  
12 read as follows:

13 Sec. 57.047. GRANT AND LOAN PROGRAM. (a) The comptroller  
14 [~~board~~] may award a grant to a project or proposal that:

15 (1) provides equipment and infrastructure necessary  
16 for:

- 17 (A) distance learning;
- 18 (B) an information sharing program of a library;
- 19 (C) telemedicine medical services; [~~or~~]
- 20 (D) telehealth services; or
- 21 (E) [~~(D)~~] a telepharmacy system;

22 (2) develops and implements the initial or  
23 prototypical delivery of a course or other distance learning  
24 material;

25 (3) trains teachers, faculty, librarians, or  
26 technicians in the use of distance learning or information sharing  
27 materials and equipment;

1           (4) develops a curriculum or instructional material  
2 specially suited for telecommunications delivery;

3           (5) provides electronic information; or

4           (6) establishes or carries out an information sharing  
5 program.

6           (b) The comptroller [~~board~~] may award a loan to a project or  
7 proposal to acquire equipment needed for distance learning and  
8 telemedicine medical service projects.

9           (c) In awarding a grant or loan under this subchapter, the  
10 comptroller [~~board~~] shall give priority to a project or proposal  
11 that:

12           (1) represents collaborative efforts involving more  
13 than one school, university, or library;

14           (2) contributes matching funds from another source;

15           (3) shows promise of becoming self-sustaining;

16           (4) helps users of information learn new ways to  
17 acquire and use information through telecommunications;

18           (5) extends specific educational information and  
19 knowledge services to a group not previously served, especially a  
20 group in a rural or remote area;

21           (6) results in more efficient or effective learning  
22 than through conventional teaching;

23           (7) improves the effectiveness and efficiency of  
24 health care delivery; or

25           (8) takes advantage of distance learning  
26 opportunities in a rural or urban school district with a:

27           (A) disproportionate number of at-risk youths;

1 or

2 (B) high dropout rate.

3 (d) In distributing money to public schools, the  
4 comptroller ~~[board]~~ shall:

5 (1) consider the relative property wealth per student  
6 of the school districts that receive the money; and

7 (2) recognize the unique needs of rural communities.

8 ~~(e) [If a board member is an employee of an entity that  
9 applies for a grant or loan under this subchapter, the board member,  
10 before a vote on the grant or loan, shall disclose the fact of the  
11 member's employment. The disclosure must be entered into the  
12 minutes of the meeting. The board member may not vote on or  
13 otherwise participate in the awarding of the grant or loan. If the  
14 board member does not comply with this subsection, the entity is not  
15 eligible for the grant or loan.]~~

16 ~~[(f)]~~ A grant or loan awarded under this section is subject  
17 to the limitations prescribed by Section 57.046.

18 SECTION 6. Subsections (a) and (b), Section 57.0475,  
19 Utilities Code, are amended to read as follows:

20 (a) The comptroller ~~[board]~~ may award a grant under Section  
21 57.047(a)(1)(C) only to a health care facility that:

22 (1) is a hospital or other entity, including a health  
23 clinic, that:

24 (A) is supported by local or regional tax  
25 revenue;

26 (B) is a certified nonprofit health corporation  
27 under federal law; or



1 (C) is an ambulatory health care center; or

2 (2) meets the criteria adopted by the comptroller  
3 [~~board~~] and the Health and Human Services Commission under  
4 Subsection (b).

5 (b) The comptroller [~~board~~] and the Health and Human  
6 Services Commission shall jointly adopt rules prescribing the  
7 criteria a health care facility not described by Subsection (a)(1)  
8 must meet to be eligible to receive a grant under Section  
9 57.047(a)(1)(C). In determining the criteria, the comptroller  
10 [~~board~~] and commission shall prioritize health care facilities  
11 based on:

12 (1) the amount of charity care provided by each  
13 facility during the year preceding the year in which the facility  
14 applies for a grant; and

15 (2) the number of Medicaid patients and patients  
16 enrolled in the state child health plan treated by each facility  
17 during the year preceding the year in which the facility applies for  
18 a grant.

19 SECTION 7. Subsection (c), Section 57.048, Utilities Code,  
20 is amended to read as follows:

21 (c) The total amount deposited to the credit of the fund,  
22 excluding interest and loan repayments, may not exceed \$1.5  
23 billion. Not later than August 31 of each year, the comptroller  
24 shall determine the total amount, excluding interest and loan  
25 repayments, that has been deposited to the credit of the fund during  
26 that fiscal year and the preceding fiscal years. If the comptroller  
27 determines that a total of \$1.2 billion or more, excluding interest

1 and loan repayments, has been deposited to the credit of the fund,  
2 the comptroller shall impose the assessment during the next fiscal  
3 year at a rate that the comptroller estimates is sufficient to  
4 produce the amount necessary to result in the deposit in the fund of  
5 a total of not more than \$1.5 billion, excluding interest and loan  
6 repayments. The assessment under this section expires on the  
7 earlier of:

8 (1) the date on which the total amount deposited to the  
9 fund reaches \$1.5 billion, excluding interest and loan repayments;

10 or

11 (2) September 1, 2005.

12 SECTION 8. Section 57.049, Utilities Code, is amended to  
13 read as follows:

14 Sec. 57.049. ISSUANCE OF WARRANTS. The [~~From money~~  
15 ~~appropriated to the board, the~~] comptroller shall issue warrants  
16 [~~the board requests~~] in accordance with the purposes of this  
17 subchapter [~~, including warrants to grantees of the board in amounts~~  
18 ~~the board certifies to the comptroller~~].

19 SECTION 9. Section 57.050, Utilities Code, is amended to  
20 read as follows:

21 Sec. 57.050. ASSISTANCE OF OTHER AGENCIES. The following  
22 agencies, in consultation with the comptroller [~~board~~], shall adopt  
23 policies and procedures that are designed to aid the comptroller  
24 [~~board~~] in achieving the purposes of this subchapter:

25 (1) the Texas Higher Education Coordinating Board;

26 (2) the Texas Education Agency; and

27 (3) the Texas State Library and Archives Commission.

1           SECTION 10. Subsection (c), Section 21.0482, Education  
2 Code, as added by Chapter 1301, Acts of the 77th Legislature,  
3 Regular Session, 2001, is amended to read as follows:

4           (c) To be eligible for a master technology teacher  
5 certificate, a person must:

6           (1) hold a technology applications or Technology  
7 Education certificate issued under this subchapter, satisfactorily  
8 complete the course of instruction prescribed under Subdivision  
9 (2)(B), and satisfactorily perform on the examination prescribed  
10 under Subdivision (2)(C); or

11           (2) hold a teaching certificate issued under this  
12 subchapter and:

13           (A) have at least three years of teaching  
14 experience;

15           (B) satisfactorily complete a knowledge-based  
16 and skills-based course of instruction on interdisciplinary  
17 technology applications and the science of teaching technology that  
18 includes training in:

19           (i) effective technology instruction  
20 techniques, including applications designed to meet the  
21 educational needs of students with disabilities;

22           (ii) classroom teaching methodology that  
23 engages student learning through the integration of technology;

24           (iii) digital learning competencies,  
25 including Internet research, graphics, animation, website  
26 mastering, and video technologies;

27           (iv) curriculum models designed to prepare

1 teachers to facilitate an active student learning environment; and

2 (v) effective professional peer mentoring  
3 techniques;

4 (C) satisfactorily perform on an examination  
5 developed by the board [~~in cooperation with the Telecommunications~~  
6 ~~Infrastructure Fund Board~~] and administered at the conclusion of  
7 the course of instruction prescribed under Paragraph (B); and

8 (D) satisfy any other requirements prescribed by  
9 the board.

10 SECTION 11. Subsection (a), Section 487.054, Government  
11 Code, is amended to read as follows:

12 (a) At least once each year, the following agency heads  
13 shall meet to discuss rural issues:

14 (1) the commissioner of agriculture;

15 (2) the executive director of the Public Utility  
16 Commission of Texas;

17 (3) the director of the Texas Agricultural Extension  
18 Service;

19 (4) [~~the presiding officer of the Telecommunications~~  
20 ~~Infrastructure Fund Board,~~

21 [~~5~~] the executive director of the Texas Department  
22 of Housing and Community Affairs;

23 (5) [~~6~~] the commissioner of health;

24 (6) [~~7~~] the executive administrator of the Texas  
25 Water Development Board;

26 (7) [~~8~~] the executive director of the Parks and  
27 Wildlife Department;

- 1           (8) [~~(9)~~] the commissioner of human services;
- 2           (9) [~~(10)~~] the commissioner of higher education;
- 3           (10) [~~(11)~~] the comptroller; and
- 4           (11) [~~(12)~~] the executive director of the Texas
- 5 Department of Transportation.

6           SECTION 12. Subsections (b) and (c), Section 531.02161,  
7 Government Code, as added by Chapter 1255, Acts of the 77th  
8 Legislature, Regular Session, 2001, are amended to read as follows:

9           (b) The commission [~~and the Telecommunications~~  
10 ~~Infrastructure Fund Board~~] by [~~joint~~] rule shall establish and  
11 adopt minimum standards for an operating system used in the  
12 provision of telemedicine medical services by a health care  
13 facility participating in the state Medicaid program, including  
14 standards for electronic transmission, software, and hardware.

15           (c) In developing standards under this section, the  
16 commission [~~and the Telecommunications Infrastructure Fund Board~~]  
17 shall address:

- 18           (1) authentication and authorization of users;
- 19           (2) authentication of the origin of information;
- 20           (3) the prevention of unauthorized access to the
- 21 system or information;
- 22           (4) system security, including the integrity of
- 23 information that is collected, program integrity, and system
- 24 integrity;
- 25           (5) maintenance of documentation about system and
- 26 information usage;
- 27           (6) information storage, maintenance, and

1 transmission; and

2 (7) synchronization and verification of patient  
3 profile data.

4 SECTION 13. Subsection (b), Section 531.02172, Government  
5 Code, as added by Chapter 661, Acts of the 77th Legislature, Regular  
6 Session, 2001, is amended to read as follows:

7 (b) The advisory committee must include:

8 (1) representatives of health and human services  
9 agencies and other state agencies concerned with the use of  
10 telemedical consultations in the Medicaid program and the state  
11 child health plan program, including representatives of:

12 (A) the commission;

13 (B) the Texas Department of Health;

14 (C) the Center for Rural Health Initiatives;

15 (D) ~~[the Telecommunications Infrastructure Fund~~  
16 ~~Board];~~

17 ~~[(E)]~~ the Texas Department of Insurance;

18 (E) ~~[(F)]~~ the Texas State Board of Medical  
19 Examiners;

20 (F) ~~[(G)]~~ the Board of Nurse Examiners; and

21 (G) ~~[(H)]~~ the Texas State Board of Pharmacy;

22 (2) representatives of health science centers in this  
23 state;

24 (3) experts on telemedicine, telemedical  
25 consultation, and telemedicine medical services or telehealth  
26 services; and

27 (4) representatives of consumers of health services

1 provided through telemedical consultations and telemedicine  
2 medical services or telehealth services.

3 SECTION 14. Subsection (b), Section 531.02172, Government  
4 Code, as added by Chapter 959, Acts of the 77th Legislature, Regular  
5 Session, 2001, is amended to read as follows:

6 (b) The advisory committee must include:

7 (1) representatives of health and human services  
8 agencies and other state agencies concerned with the use of  
9 telemedical consultations in the Medicaid program and the state  
10 child health plan program, including representatives of:

- 11 (A) the commission;
- 12 (B) the Texas Department of Health;
- 13 (C) the Center for Rural Health Initiatives;
- 14 (D) ~~[the Telecommunications Infrastructure Fund~~  
15 ~~Board];~~

- 16 [~~(E)~~] the Texas Department of Insurance;
- 17 (E) [~~(F)~~] the Texas State Board of Medical  
18 Examiners;

- 19 (F) [~~(G)~~] the Board of Nurse Examiners; and
- 20 (G) [~~(H)~~] the Texas State Board of Pharmacy;

21 (2) representatives of health science centers in this  
22 state;

23 (3) experts on telemedicine, telemedical  
24 consultation, and telemedicine medical services; and

25 (4) representatives of consumers of health services  
26 provided through telemedical consultations and telemedicine  
27 medical services.

1 SECTION 15. Subsection (a), Section 2054.201, Government  
2 Code, is amended to read as follows:

3 (a) The telecommunications planning and oversight council  
4 is composed of:

5 (1) a representative of the comptroller's office,  
6 appointed by the comptroller;

7 (2) [~~the executive director of the Telecommunications~~  
8 ~~Infrastructure Fund Board,~~

9 [~~(3)~~] a representative of the Texas Building and  
10 Procurement Commission, appointed by the executive director of the  
11 commission;

12 (3) [~~(4)~~] a member representing the interests of state  
13 agencies with 1,000 employees or more, appointed by the lieutenant  
14 governor;

15 (4) [~~(5)~~] a member representing the interests of state  
16 agencies with fewer than 1,000 employees, appointed by the speaker  
17 of the house of representatives;

18 (5) [~~(6)~~] a member representing the interests of  
19 institutions of higher education, appointed by the commissioner of  
20 higher education;

21 (6) [~~(7)~~] a member representing the interests of The  
22 University of Texas System, appointed by the chancellor;

23 (7) [~~(8)~~] a member representing the interests of The  
24 Texas A&M University System, appointed by the chancellor;

25 (8) [~~(9)~~] a member representing the interests of  
26 public school districts that are customers of the consolidated  
27 telecommunications system, appointed by the governor;



1           (9) [~~(10)~~] a member representing the interests of  
2 local governments that are customers of the consolidated  
3 telecommunications system, appointed by the governor; and

4           (10) [~~(11)~~] two public members with  
5 telecommunications expertise, appointed by the governor.

6           SECTION 16. Subsection (c), Section 2165.104, Government  
7 Code, is amended to read as follows:

8           (c) To the extent possible without sacrificing critical  
9 public or client services, the commission may not allocate usable  
10 office space, as defined by the commission, to a state agency under  
11 Article I, II, V, VI, VII, or VIII of the General Appropriations Act  
12 or to the Texas Higher Education Coordinating Board, the Texas  
13 Education Agency, the State Board for Educator Certification, [~~the~~  
14 ~~Telecommunications Infrastructure Fund Board,~~] or the Office of  
15 Court Administration of the Texas Judicial System in an amount that  
16 exceeds an average of 153 square feet per agency employee for each  
17 agency site. To the extent that any of those agencies allocates its  
18 own usable office space, as defined by the commission, the agency  
19 shall allocate the space to achieve the required ratio. This  
20 subsection does not apply to:

21           (1) an agency site at which fewer than 16 employees are  
22 located;

23           (2) warehouse space;

24           (3) laboratory space;

25           (4) storage space exceeding 1,000 gross square feet;

26           (5) library space;

27           (6) space for hearing rooms used to conduct hearings

1 required under the administrative procedure law, Chapter 2001; or

2 (7) another type of space specified by commission  
3 rule, if the commission determines that it is not practical to apply  
4 this subsection to that space.

5 SECTION 17. Sections 57.044, 57.045, and 57.051, Utilities  
6 Code, are repealed.

7 SECTION 18. The comptroller of public accounts may not  
8 divert, distribute, or appropriate any funds from the  
9 telecommunications infrastructure fund until the assessment period  
10 required under Subsection (c), Section 57.048, Utilities Code, as  
11 amended by this Act, has expired.

12 SECTION 19. (a) The telecommunications infrastructure  
13 fund board is abolished but continues in effect until December 1,  
14 2003, for the sole purpose of transferring to the comptroller of  
15 public accounts all the rights, powers, duties, and functions  
16 exercised by the board immediately before the effective date of  
17 this Act. The transfer must be completed not later than December 1,  
18 2003.

19 (b) All rules of the telecommunications infrastructure fund  
20 board are continued in effect as rules of the comptroller of public  
21 accounts until superseded by a rule of the comptroller of public  
22 accounts.

23 (c) All funds, contracts, property, personnel, and records  
24 of the telecommunications infrastructure fund board are  
25 transferred to the comptroller of public accounts for the purpose  
26 of administering the telecommunications infrastructure fund.

27 (d) A reference in law or in an administrative rule to the

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1 telecommunications infrastructure fund board means the comptroller  
2 of public accounts.

3 SECTION 20. This Act takes effect September 1, 2003.